A **SAIMAN UMAR v. LEMBAGA PERTUBUHAN PELADANG**

FEDERAL COURT, PUTRAJAYA
ARIFIN ZAKARIA CJ
RAUS SHARIF PCA
AHMAD MAAROP FCJ
B MOHAMED APANDI ALI FCJ
AZAHAR MOHAMED FCJ
[CIVIL APPEAL NO: 01(f)-16-06-2014 (J)]
8 OCTOBER 2015

C ***ADMINISTRATIVE LAW:*** *Rules of natural justice – Hearing by disciplinary committee – Employee dismissed from service – Whether employer complied with procedures in conduct of disciplinary proceedings – Whether employee given sufficient opportunity to be heard – Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan dan Tatatertib) 1994, regs. 4(2)(c)(ii), (d), (f) & 28*

D ***CIVIL PROCEDURE:*** *Pleadings – Departure from – Whether grounds of appeal entirely different from pleaded claim – Factual assertion responded by way of general traverse – Whether operated as denial – Whether rendered respondent's case to not have bearing on appellant's pleaded case – Rules of the High Court 1980, O. 18 r. 13*

E The respondent ('defendant'), a body corporate established under the provisions of the Farmer Organisation Authority Act 1973 ('the Act'), initiated a disciplinary action against the appellant ('plaintiff'), *inter alia*, for (i) behaving in a way that would raise suspicions that the plaintiff was using his official position for his own benefit pursuant to reg. 4(2)(c)(ii), 4(2)(d) and
F 4(2)(f) of the Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan dan Tatatertib) 1994 ('the Disciplinary Rules'); and (ii) putting the plaintiff in a position of financial obligation with someone who had official business with the defendant pursuant to regs. 10(1)(a) and 12(1)(b) of the Disciplinary Rules. The plaintiff denied the charges. Upon consideration of
G the plaintiff's representation, the Disciplinary Committee found the plaintiff guilty of both charges and thus, dismissed the plaintiff from service. The plaintiff's appeal to the Disciplinary Appeal Board, on the ground that a hearing was supposed to be held before the decision was passed and he was not given the opportunity to cross-examine witnesses and scrutinise the
H related documents, was dismissed and the decision of the Disciplinary Committee was affirmed. This led to an action by the plaintiff against the defendant for unlawful dismissal. The High Court found in favour of the plaintiff, holding that the defendant was in breach of the rules of natural justice by not giving the plaintiff an opportunity to be heard when it did not
I hold a hearing. On appeal by the defendant, the Court of Appeal reversed the decision of the High Court and, in allowing the defendant's appeal, held that

the defendant had complied with all the procedures. The plaintiff's application for leave to appeal was allowed on the question of whether the Investigation Committee appointed under reg. 28(4) of the Disciplinary Rules could conduct further investigation and call for further evidence without notifying the date and time to the officer under investigation and take evidence behind the back of the officer without affording him a reasonable opportunity to cross-examine witnesses or produce any witnesses to rebut, contradict, controvert or explain further to the Investigation Committee. It was the plaintiff's contention that the defendant had made unequivocal admissions in paras 8.1 and 8.2 of its statement of defence as regards formation of the Investigation Committee and calling of witnesses to take further evidence. On that basis, the plaintiff argued that the Investigation Committee was in actual fact established but he was not notified of the date and time of the inquiry before the Investigation Committee and therefore was not given the opportunity to be present at the hearing and was deprived of the right to cross-examine the witnesses and to produce any witnesses or evidence to rebut, contradict or explain further to the Investigation Committee. In refuting the plaintiff's contention, the defendant submitted that the plaintiff's approach differed entirely from his pleaded claim. The defendant submitted that the plaintiff's pleaded case was about the non-application of reg. 28 of the Disciplinary Rules whereas the plaintiff's position herein was that an Investigation Committee under reg. 28 was established and that he was not called upon to attend it.

Held (dismissing appeal)
Per Azahar Mohamed FCJ delivering the judgment of the court:

(1) The disciplinary proceeding against the plaintiff was carried out under the provisions of reg. 28 of the Disciplinary Rules. The establishment of an Investigation Committee may be made under reg. 28 which provides that if the Disciplinary Committee considers that a case against an officer requires further clarification, it may establish an Investigation Committee for the purpose of obtaining such further clarification. It was only if an Investigation Committee is appointed because the Disciplinary Committee required further clarification, that the officer be afforded the opportunity of giving oral testimony to exculpate himself. (paras 22, 27 & 28)

(2) No report of the alleged Investigation Committee was ever adduced in evidence. In fact, the High Court had made a factual finding that there was no evidence to show that an Investigation Committee was appointed and it was corroborated by the fact that there was no mention of any Investigation Committee in the Disciplinary Committee's letter. (paras 34 & 35)

(3) Parties to an action are bound by their own pleadings, whilst the court is also bound by the pleadings in as much as the parties themselves. Paragraph 8.1 and 8.2 in the defendant's statement of defence, as being the key plank in establishing the plaintiff's case on the existence of the Investigation Committee, had been tellingly denied by the plaintiff himself at para 5 of his reply to the defendant's statement of defence. Hence, a factual assertion made by the defendant in paras 8.1 and 8.2 was responded by way of a general traverse by the plaintiff when he averred that except where previously admitted, the plaintiff denied each and every allegation contained in the defendant's statement of defence. (paras 41, 42 & 43)

(4) Order 18 r. 13 of the Rules of the High Court 1980 provides that a traverse operates to deny an allegation of fact. Thus, the effect of traverse is to deny each and every factual allegation raised by the opposing party. In the result, the obvious consequence of the general traverse contained in para 5 of the plaintiff's statement of reply was to deny the defendant's factual allegation that an Investigation Committee was in fact established. The plaintiff's denial of the establishment of the Investigation Committee was in direct contradiction of the contention that an Investigation Committee was in fact formed under reg. 28(4) of the Disciplinary Rules. (paras 45-47)

(5) The plaintiff did not admit paras 8.1 and 8.2 of the defendant's statement of defence to support his contention that the Investigation Committee was in fact established and that he was not called for the hearing. Hence, the tenor and thrust of the plaintiff's statement of reply was a total rejection of the defendant's factual averments. In the circumstances, the defendant's averments in paras 8.1 and 8.2 of the statement of defence ultimately had no bearing on the plaintiff's case. (paras 49-50)

Bahasa Malaysia *Translation Of Headnotes*

Responden ('defendan'), sebuah badan korporat yang ditubuhkan di bawah peruntukan Akta Lembaga Pertubuhan Peladang 1973 ('Akta'), memulakan tindakan disiplin terhadap perayu ('plaintif'), antara lain, kerana (i) berkelakuan dalam cara yang boleh membangkitkan keraguan bahawa plaintif menggunakan kedudukan rasminya bagi faedah sendiri menurut per. 4(2)(c)(ii), 4(2)(d) dan 4(2)(f) Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan dan Tatatertib) 1994 ('Peraturan Tatatertib'); dan (ii) meletakkan plaintif dalam kedudukan tanggungjawab kewangan dengan seseorang yang mempunyai urusan rasmi dengan defendan menurut per. 10(1)(a) dan 12(1)(b) Peraturan Tatatertib. Plaintif menafikan pertuduhan-pertuduhan tersebut. Selepas mempertimbangkan representasi plaintif, Jawatankuasa Tatatertib mendapati plaintif bersalah terhadap kedua-dua pertuduhan dan oleh itu, menamatkan perkhidmatan plaintif. Rayuan plaintif kepada Lembaga Rayuan Disiplin atas alasan bahawa perbicaraan

sepatutnya diadakan sebelum keputusan dibuat dan dia tidak diberikan peluang untuk menyoal balas saksi-saksi dan menilai dokumen yang berkaitan, ditolak dan keputusan Jawatankuasa Tatatertib disahkan. Ini menjurus kepada tindakan oleh plaintif terhadap defendan bagi pembuangan kerja secara tidak sah. Mahkamah Tinggi membuat dapatan yang memihak kepada plaintif dengan memutuskan bahawa defendan telah melanggar undang-undang keadilan semulajadi dengan tidak memberikan plaintif peluang untuk dibicarakan kerana tidak menjalankan perbicaraan. Atas rayuan oleh defendan, Mahkamah Rayuan mengakas keputusan Mahkamah Tinggi dan, dalam membenarkan rayuan defendan, memutuskan bahawa defendan telah mematuhi kesemua prosedur. Permohonan plaintif untuk kebenaran merayu dibenarkan atas persoalan sama ada Jawatankuasa Siasatan yang dilantik di bawah per. 28(4) Peraturan Tatatertib boleh menjalankan siasatan lanjut dan memanggil keterangan lanjut tanpa memberikan notis mengenai tarikh dan masa kepada pegawai yang sedang disiasat dan mengambil keterangan di belakang pegawai tersebut tanpa memberikannya peluang munasabah untuk menyoal balas saksi-saksi atau mengemukakan saksi untuk mematahkan, menyanggah, mempertikaikan atau menjelaskan dengan lanjut kepada Jawatankuasa Siasatan. Plaintif menghujahkan bahawa defendan telah membuat pengakuan jelas dalam perenggan 8.1 dan 8.2 penyataan pembelaannya berkaitan dengan pembentukan Jawatankuasa Siasatan dan memanggil saksi untuk keterangan lanjut. Atas dasar tersebut, plaintif menghujahkan bahawa Jawatankuasa Siasatan sebenarnya telah ditubuhkan tetapi dia tidak diberitahu tentang tarikh dan masa siasatan tersebut di hadapan Jawatankuasa Siasatan dan oleh itu tidak diberikan peluang untuk hadir semasa perbicaraan dan dinafikan hak untuk menyoal balas saksi dan mengemukakan saksi atau keterangan untuk mematahkan, menyanggah atau menjelaskan dengan lanjut kepada Jawatankuasa Siasatan. Menyangkal hujahan plaintif, defendan menyatakan bahawa pendekatan plaintif berbeza sama sekali daripada tuntutan yang diplid olehnya. Defendan menghujahkan bahawa kes plaintif yang diplidkan adalah mengenai kegagalan mengguna pakai per. 28 Peraturan Tatatertib manakala kedudukan plaintif dalam kes ini adalah bahawa mematahkan, menyanggah, mempertikaikan atau menjelaskan dengan lanjut kepada Jawatankuasa Siasatan di bawah per. 28 telah ditubuhkan dan dia tidak dipanggil menghadirinya.

Diputuskan (menolak rayuan)

Oleh Azahar Mohamad HMP menyampaikan penghakiman mahkamah:

(1) Prosiding tatatertib terhadap plaintif dijalankan di bawah peruntukan per. 28 Peraturan Tatatertib. Pembentukan Jawatankuasa Siasatan boleh dibuat di bawah per. 28 yang memperuntukkan bahawa jika Jawatankuasa Disiplin menganggap bahawa kes terhadap seseorang pegawai memerlukan penjelasan lanjut, ia boleh menubuhkan

A Jawatankuasa Siasatan bagi tujuan memperolehi penjelasan tersebut. Ia hanya jika Jawatankuasa Siasatan dilantik kerana Jawatankuasa Disiplin memerlukan penjelasan lanjut bahawa pegawai tersebut diberikan peluang untuk memberikan keterangan lisan untuk membebaskan dirinya.

B **(2)** Tiada laporan mengenai Jawatankuasa Siasatan yang dikatakan tersebut dikemukakan sebagai keterangan. Malahan, Mahkamah Tinggi telah membuat dapatan fakta bahawa tidak ada keterangan yang menunjukkan bahawa Jawatankuasa Siasatan telah dilantik dan ia menyokong fakta bahawa tidak disebut apa-apa tentang Jawatankuasa Siasatan dalam surat
C Jawatankuasa Disiplin.

(3) Pihak-pihak dalam tindakan terikat oleh plidingnya sendiri, manakala mahkamah turut terikat oleh pliding tersebut sama seperti pihak-pihak yang bertikai. Perenggan 8.1 dan 8.2 penyataan pembelaan defendan, yang menjadi asas dalam membentuk kes plaintif mengenai kewujudan
D Jawatankuasa Siasatan, telah dinafikan oleh plaintif sendiri dalam perenggan 5 jawapan kepada penyataan pembelaan defendan. Oleh itu, penyataan fakta yang dibuat oleh defendan dalam perenggan 8.1 dan 8.2 dijawab secara penyangkalan am oleh plaintif apabila dia menyatakan bahawa kecuali di mana diperakui sebelumnya, plaintif menafikan setiap
E satu dan kesemua dakwaan yang terkandung dalam penyataan pembelaan defendan.

(4) Aturan 18 k. 13 Kaedah-Kaedah Mahkamah Tinggi 1980 memperuntukkan bahawa penyangkalan berfungsi sebagai penafian sesuatu penyataan fakta. Oleh itu, kesan penyangkalan adalah untuk
F menafikan setiap satu dan kesemua dakwaan fakta yang dibangkitkan oleh pihak yang menentang. Hasilnya, akibat jelas oleh penyangkalan am yang terkandung dalam perenggan 5 penyataan jawapan plaintif adalah untuk menafikan dakwaan fakta defendan bahawa Jawatankuasa Siasatan sememangnya telah ditubuhkan. Penafian plaintif terhadap penubuhan
G Jawatankuasa Siasatan secara langsung bertentangan dengan hujahan bahawa Jawatankuasa Siasatan telah dibentuk di bawah per. 28(4) Peraturan Tatatertib.

(5) Plaintif tidak mengakui perenggan 8.1 dan 8.2 penyataan pembelaan defendan untuk menyokong hujahannya bahawa Jawatankuasa Siasatan
H telah sebenarnya ditubuhkan dan bahawa dia tidak dipanggil untuk pendengaran. Dengan itu, maksud dan asas penyataan jawapan plaintif adalah penolakan mutlak penyataan fakta defendan. Dalam keadaan tersebut, penyataan defendan dalam perenggan 8.1 dan 8.2 penyataan pembelaan pada dasarnya tidak mempunyai apa-apa kesan kepada kes
I plaintif.

Case(s) referred to:

Ambank (M) Bhd v. Luqman Kamil Muhammed Don [2012] 3 CLJ 551 FC ***(refd)***

B Surinder Singh Kanda v. The Government of The Federation of Malaya [1962] 1 LNS 14 PC ***(refd)***

Borneo Housing Mortgage Finance Bhd v. The Personal Representative of the Estate of Maureen Lee Lun Wah (Deceased) & Anor [1994] 1 CLJ 501 HC ***(refd)***

Ganasan Marimuthu v. Public Services Commission & Anor [1998] 4 CLJ 331 CA ***(refd)***

Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara Malaysia & Anor [1994] 2 CLJ 333 SC ***(refd)***

Janagi v. Ong Boon Kiat [1971] 1 LNS 42 HC ***(refd)***

John Lancaster Radiators Ltd v. General Motor Radiator Co Ltd [1946] 2 All ER 685 ***(refd)***

Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 CLJ 619 CA ***(refd)***

Shamsiah Ahmad Sham v. Public Services Commission, Malaysia & Anor [1991] 1 CLJ 23; [1991] 1 CLJ (Rep) 419 SC ***(refd)***

Syarikat Kemajuan Timbermine Sdn Bhd v. Kerajaan Negeri Kelantan Darul Naim [2015] 2 CLJ 1037 FC ***(refd)***

Victory Avenue Mfg (M) Sdn Bhd v. Matsushita Electronic Devices (M) Sdn Bhd [2009] 1 LNS 296 FC ***(refd)***

Warner v. Sampson [1959] 1 QB 297 ***(refd)***

Yew Wan Leong v. Lai Kok Chye [1990] 1 CLJ 1113; [1990] 1 CLJ (Rep) 330 SC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 78(1)

Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan dan Tatatertib) 1994, regs. 4(2)(c)(ii), (d), (f), 10(1)(a), 12(1)(b), 25(1), (2), 28(1), (4), (7)

Rules of the High Court 1980, O. 18 r. 13

Other source(s) referred to:

MP Jain, *Administrative Law of Malaysia and Singapore*, 3rd edn, p 226

For the appellant - Subramaniam Nair (Ebrina Zubir with him); M/s Maniam Nair & Co

For the respondent - Fahri Azzat (Rafeeza Hamdan with him); M/s Azzat & Izzat

[Editor's note: For the Court of Appeal judgment, please see Lembaga Pertubuhan Peladang Malaysia v. Saiman Umar [2015] 7 CLJ 714.]

Reported by S Barathi

JUDGMENT

Azahar Mohamed FCJ:

Introduction

[1] This is an appeal from the judgment of the Court of Appeal that reversed the judgment of the High Court. The appeal arises from an action brought by the appellant, Saiman bin Umar in the High Court against the respondent, Lembaga Pertubuhan Peladang based on the cause of action of unlawful dismissal.

[2] We shall be referring to parties in this judgment as they were in the High Court, namely the appellant as the plaintiff and the respondent as the defendant.

Background Facts

[3] The defendant is a body corporate established under the provisions of the Farmers' Organisation Authority Act 1973 (the Act).

[4] The defendant from 28 December 1973 until 1 March 2002 employed the plaintiff. The plaintiff started his employment with the defendant as a clerk. At the time of his dismissal, that is to say on 1 March 2002, the plaintiff held the post of assistant officer of economics affairs.

[5] On 11 July 2000, the defendant initiated a disciplinary action against the plaintiff by issuing a show cause letter dated 21 June 2000 to him. It was alleged that the plaintiff had borrowed a sum of RM40,000 from a contractor, one Madzlan bin Abd Rahman (Madzlan) on 21 May 1990 while the plaintiff was holding the post of Pengurus Besar Pertubuhan Peladang Kawasan Mersing Utara-Endau, Johor.

[6] In the same show cause letter, the defendant formulated two charges against the plaintiff pursuant to reg. 28 of the Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan dan Tatatertib) 1994 (the Disciplinary Rules). The first charge was for behaving in a way that would raise suspicions that the plaintiff was using his official position for his own benefit pursuant to regs. 4(2)(c)(ii), 4(2)(d) and 4(2)(f) of the Disciplinary Rules. The second charge was for putting the plaintiff in a position of financial obligation with someone who had official business with the defendant pursuant to regs. 10(1)(a) and 12(1)(b) of the Disciplinary Rules.

[7] By a letter dated 28 July 2000, the plaintiff requested for documents to enable him to prepare his representation since the alleged misconduct happened ten years earlier. The defendant by a letter dated 7 August 2000 asked the plaintiff to specify the documents, which he required. By a letter dated 8 August 2000, the plaintiff specified the documents, which he required to prepare his representation.

[8] By a letter dated 24 August 2000, the defendant turned down the request of the plaintiff on the ground that the documents requested by him were not relevant to the charges and the plaintiff was instructed to put in his representation letter within 14 days.

[9] By a letter dated 9 September 2000, the plaintiff made his representation to the show cause letter. The plaintiff denied borrowing or receiving RM40,000 as a loan from Madzlan in answer to the two charges. Together with his representation letter, the plaintiff enclosed a letter allegedly written by Madzlan dated 6 September 2000 and a statutory declaration by Madzlan denying that he lent the plaintiff the said sum.

[10] The defendant's disciplinary committee informed the plaintiff by letter dated 17 May 2001 that they had considered his representation and found him guilty of both charges. In the same letter, the plaintiff was given a right to mitigate within 21 days.

[11] On 31 May 2001, the plaintiff replied by stating that he was not satisfied with the disciplinary committee's decision and requested that the decision be reviewed.

[12] On 25 February 2002, the defendant's disciplinary committee informed the plaintiff that after having reviewed and deliberated on the plaintiff's appeal, they decided the plaintiff failed to exculpate himself. The plaintiff was also informed about his dismissal from service with effect from 1 March 2002. In the same letter, the plaintiff was also informed that he could appeal to the disciplinary appeal board within 14 days.

[13] The plaintiff appealed against the decision to the defendant's disciplinary appeal board on the ground that a hearing was supposed to be held before the decision was passed and he was not given the opportunity to cross-examine witnesses and scrutinise the related documents.

[14] By a letter dated 18 November 2002, the disciplinary appeal board informed the plaintiff that the disciplinary appeal board had on 8 November 2002 affirmed the decision of the disciplinary committee, hence dismissing the appeal.

[15] This then led the plaintiff filing a writ action on 3 October 2005, at the Johor Bahru High Court and among others, prayed for:

(i) a declaration that the plaintiff's dismissal by the defendant be declared null and void;

(ii) the plaintiff be reinstated to his post and be compensated of all arrears of salaries, and allowances that he was entitled to receive from 1 March 2002 until 10 January 2004; and

(iii) the plaintiff is paid a gratuity and pension from 10 January 2004 according to his eligibility.

Decision Of The High Court

[16] On 15 November 2010, the High Court found in favour of the plaintiff. In allowing the plaintiff's claim, the High Court held that the defendant was in breach of the rules of natural justice by not giving the plaintiff an opportunity to be heard when it did not hold a hearing.

[17] The High Court went on to decide that reg. 28 of the Disciplinary Rules must be interpreted *vis-à-vis* reg. 25 and held that by its interpretation, reg. 25(2) required the defendant to record in writing the reason why it was not practical to comply with the Regulations.

[18] Following from this, the High Court allowed the plaintiff's claim namely that his employment be restored and all arrears in salaries and allowances to be paid to him from 1 March 2002 to 10 January 2004 (date of retirement) and the consequential reliefs prayed for with costs of RM6,000.

Decision Of The Court Of Appeal

[19] On appeal, the Court of Appeal reversed the decision of the High Court. The Court of Appeal in allowing the defendant's appeal held that reg. 25(1) of the Disciplinary Rules, which provides that no officer can be dismissed or reduced in rank in any disciplinary proceedings unless he is informed in writing about the intended disciplinary proceedings and that he is given a reasonable opportunity to be heard, had been complied with by the defendant. The plaintiff was served with a show cause letter informing him about the charges preferred and that he was given two months to reply to the said letter before the disciplinary committee finally decided to dismiss him from his employment with the defendant. Relying on the case of *Ghazi Mohd Sawi v. Mohd Haniff bin Omar, Ketua Polis Negara Malaysia & Anor* [1994] 2 CLJ 333; [1994] 2 MLJ 114, the Court of Appeal held that from the evidence it was clear that the plaintiff had been given a reasonable opportunity to be heard; the plaintiff was given sufficient time to reply to the show cause letter.

[20] The Court of Appeal held, *inter alia*, that the defendant had complied with all the procedures. In its ground of judgment the Court of Appeal stated:

> Rule 28(1) discuss on the procedural rules which the Disciplinary Committee had to fulfil. The learned counsel for the appellant submitted that all the procedures have been complied with. The procedure (in short) is to prepare a set of facts together with the intended punishment and send them to the respondent. The respondent, upon receipt of the documents was to prepare a written representation explaining why such disciplinary action should not be taken against him. It was done so in the instant case.
>
> We agree with the submission by the learned counsel for the appellant that the learned Judge's complaints about the failure to record the reason why the investigation committee was not appointed are misplaced.
>
> Moreover, the procedure as stipulated under Rule 28(1) had been complied with. Rule 28(4) does not place any requirement to explain in writing, why the investigation committee is not required. Furthermore, there is nothing in the sub-provision that places such burden on them.
>
> Therefore, to read the requirements under Rule 25(2)(b) into Rule 28(4) is wrong. It is a clear and an unambiguous provision of the statute and must be given their natural and ordinary meaning. See *Hari Bahadur Ghale v. Pendakwa Raya* [2012] MLJU 947. Therefore, we find that the learned Judge's decision (even not submitted by the parties or pleaded in the pleadings) on this issue is baseless.

The Question Of Law On Appeal To The Federal Court

[21] On 21 May 2014, the plaintiff's application for leave to appeal was allowed on the following question:

> Can the Investigation Committee appointed under Regulation 28(4) of Peraturan-peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan dan Tatatertib) 1994 conduct further investigation and call for further evidence without notifying the date and time to the officer under investigation and take evidence behind the back of the officer without affording him a reasonable opportunity to cross-examine witnesses or produce any witnesses to rebut, contradict, controvert or explain further to the Investigation Committee?

[22] The disciplinary proceeding against the plaintiff was carried out under the provisions of reg. 28 of the Disciplinary Rules. It should be stressed that the show cause letter dated 21 June 2000 referred to reg. 28, and it specifically stated the breach of discipline complained of against the plaintiff was of a nature, which merits a punishment of dismissal.

[23] As will be explained later in the judgment, for the proper determination of the question posed to us, the issue must be approached on the basis of the following provisions of the disciplinary rules.

[24] First, reg. 28(1) of the Disciplinary Rules, which states:

> Jawatankuasa Tatatertib yang bersidang untuk menimbangkan suatu kes yang pelanggaran tatatertib yang diadukan adalah didapati daripada jenis yang patut dikenakan suatu hukuman buang kerja atau turun pangkat hendaklah menimbangkan segala maklumat yang ada dan jika didapati bahawa terdapat suatu kes *prima facie* terhadap pegawai itu untuk dibuang kerja atau diturunkan pangkat, Jawatankuasa Tatatertib hendaklah mengarahkan supaya suatu pernyataan yang mengandungi fakta-fakta pelanggaran tatatertib yang dikatakan telah dilakukan oleh pegawai itu dan apa-apa alasan yang dicadangkan yang berdasarkannya pegawai itu hendak dibuang kerja atau diturunkan pangkat dihantarkan kepada pegawai itu dan pegawai itu hendaklah diminta membuat suatu representasi bertulis, yang mengandungi alasan-alasan yang berdasarkannya pegawai itu bergantung untuk membebaskan dirinya, dalam tempoh tidak kurang daripada dua puluh satu hari dari tarikh penerimaan pertuduhan itu.

[25] In essence, reg. 28(1) generally provides that the disciplinary committee shall, after considering all the available information in its possession that there is a *prima facie* case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, of the ground or grounds on which it proposes to dismiss the officer or reduce him in rank and shall call upon him to state in writing within a period of not less than 21 days from the date of receipt of the letter a representation containing grounds upon which he relies to exculpate himself. As indicated earlier, on 21 June 2000,

A the defendant's disciplinary committee wrote to the plaintiff informing him of the decision to institute disciplinary proceedings against the plaintiff under reg. 28 of the Disciplinary Rules.

[26] Second, reg. 28(4), which prescribes, with the necessary emphasis:

B > Jika Jawatankuasa Tatatertib berpendapat bahawa kes terhadap pegawai itu menghendaki penjelasan selanjutnya, **Jawatankuasa Tatatertib itu boleh melantik Jawatankuasa Penyiasat** yang terdiri daripada tidak kurang daripada dua orang pegawai Lembaga yang lebih kanan daripada pegawai yang di bawah penyiasatan.

C And third, reg. 28(7), which provides, with the necessary emphasis:

> **Jika saksi-saksi dipanggil dan diperiksa oleh Jawatankuasa Penyiasatan itu, pegawai itu hendaklah diberi peluang untuk hadir** dan untuk menyoal saksi-saksi itu bagi pihak dirinya sendiri dan tiada keterangan dokumentar boleh digunakan terhadapnya melainkan jika pegawai itu telah sebelum ini dibekalkan dengan suatu salinan keterangan
D > dokumentar itu atau diberikan akses kepadanya.

[27] From the above provisions it is clear that the establishment of an investigation committee may be made under reg. 28(4) of the Disciplinary Rules. It provides that if the disciplinary committee considers that a case
E against an officer requires further clarification, it may establish an investigation committee for the purpose of obtaining such further clarification.

[28] In a disciplinary proceeding initiated under reg. 28, such an opportunity to be heard orally can only arise under reg. 28(4) at the
F "investigation committee" stage. It is only if an investigation committee is appointed because the disciplinary committee required further clarification that the officer will be afforded the opportunity of giving oral testimony to exculpate himself (see *Ganasan Marimuthu v. Public Services Commission & Anor* [1998] 4 CLJ 331).

G **[29]** Regulation 28(7) provides that if witnesses are called and examined by the investigation committee, the officer should be allowed to be present and to cross-examine the witnesses and no documentary evidence should be used against the officer unless the officer has previously been supplied with a copy of the evidence. This is consistent with the basic concept of natural justice,
H which is built upon the well-known adage that no one should be condemned unheard (see *Administrative Law of Malaysia and Singapore*, 3rd edn by Professor MP Jain at p. 226).

[30] The fundamental question which we must then ask here is: whether the investigation committee pursuant to reg. 28(4) of the Disciplinary Rules had
I been established by the disciplinary committee for the purpose of obtaining further clarification.

[31] This then brings into sharp focus the contention of learned counsel for the plaintiff to the effect that the defendant had made unequivocal admission in his statement of defence as regard the formation of the investigation committee and calling of witnesses to take further evidence. To this end, learned counsel then took us through the defendant's statement of defence. In particular he brought to our attention paras. 8.1 and 8.2, which read:

> 8.1 Tambahan kepada itu, Defendan menyatakan bahawa Encik Madzlan bin Abdul Rahman telah juga diminta untuk hadir untuk memberi keterangan berkenaan dengan surat akuan bersumpah yang kononnya telah ditandatangani olehnya pada 9.9.2000 dan surat bertarikh 6.9.2000 tetapi beliau telah enggan untuk berbuat demikian.
>
> 8.2 Walau baqaimanapun, Encik Madzlan bin Abdul Rahman telah enggan untuk hadir dan memberi pengesahan sama ada beliau telah menandatangani surat dan surat akuan tersebut walaupun cukup notis telah diberi kepadanya.

[32] Given the above averments, learned counsel argued that a witness could only be called to testify under reg. 28(7) of the Disciplinary Rules when an investigation committee was formed under reg. 28(4) of the Disciplinary Rules. This is the essence of his contention. On the basis of the explicit admission in paras. 8.1 and 8.2 of the statement of defence, he argued that the investigation committee was in actual fact established for the purpose of obtaining further clarification and that witnesses were called to give evidence before the investigation committee. Considered in that way, learned counsel argued that the plaintiff was not notified of the date and time of the inquiry before the investigation committee and for that reason, he added, the plaintiff was not given the opportunity to be present at the hearing of the investigation committee, and the plaintiff was deprived of the right to cross-examine the witnesses and also to produce any witnesses or evidence to rebut, contradict or explain further to the investigation committee. As a result, he submitted, the disciplinary proceedings against the plaintiff had infringed reg. 28(7) of the Disciplinary Rules.

[33] Relying on *B Surinder Singh Kanda v. The Government of The Federation of Malaya* [1962] 1 LNS 14; [1962] 1 MLJ 169, *Shamsiah Ahmad Sham v. Public Services Commission, Malaysia & Anor* [1991] 1 CLJ 23; [1991] 1 CLJ (Rep) 419; [1990] 3 MLJ 364 and *Raja Abdul Malek Muzaffar Shah Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 CLJ 619; [1995] 1 MLJ 308, learned counsel for the plaintiff submitted that it is trite law that procedural fairness dictated that evidence should not be taken behind the plaintiff's back. Hence, he submitted that the disciplinary proceedings resulting in the plaintiff's dismissal was flawed because there were serious breach of the rules of natural justice and serious breach of mandatory procedures.

[34] It has to be highlighted at this point that no report of the alleged investigation committee was ever adduced in evidence. In this regard, it is important to bear in mind that all the documents from pp. 488 - 557 of part B of the record of appeal (save for pp. 536 and 537) pertaining to the alleged establishment and inquiry of the investigation committee were excluded by this court on 26 January 2015 when the defendant's application to strike out the record of appeal was dismissed on the ground that those documents were not part of the trial evidence before the High Court; it should not therefore have been included in the record of appeal.

[35] In this respect, it is pertinent to note that the High Court made a factual finding that "there is no evidence to show that an investigation committee was appointed. This is corroborated by the fact that there is no mention whatsoever of any investigation committee in the disciplinary committee's letter dated 17 May 2001". To which we will add that a person who asserts the existence of any fact must prove that the fact exists (see *Syarikat Kemajuan Timbermine Sdn Bhd v. Kerajaan Negeri Kelantan Darul Naim* [2015] 2 CLJ 1037).

[36] This leaves us therefore to consider this crucial question: whether on the basis of the pleadings alone, a finding can be made that an investigation committee was in fact established as asserted by the plaintiff pursuant to reg. 28(4) of the Disciplinary Rules.

[37] In refuting the contention of the plaintiff that an investigation committee had in fact been established, learned counsel for the defendant submitted that in the first place the approach taken by the plaintiff in the present case differed entirely from his pleaded claim. Learned counsel referred to para. 22 the plaintiff's statement of claim, which read:

> Plaintif menyatakan bahawa tindakan Defendan telah melanggar peruntukan 28 Peraturan-Peraturan Pegawai LPP (Kelakuan Tatatertib 1994) iaitu Defendan gagal menubuhkan jawatankuasa siasatan dan gagal memanggil saksi-saksi untuk diperiksa dan disoal balas.

[38] He pointed out that the plaintiff's pleaded claim was that the defendant had breached reg. 28(4) of the Disciplinary Rules when it failed to establish an investigation committee for the purpose of obtaining further clarification by way of examining witnesses. To put the point differently, the plaintiff's pleaded case was about the non-application of reg. 28 of the Disciplinary Rules, whereas the plaintiff's position before this court was that an investigation committee under reg. 28 was established and that he was not called upon to attend it.

[39] To support his submission that a court should not decide an issue that is not pleaded, he brought to our attention the case of *Yew Wan Leong v. Lai Kok Chye* [1990] 1 CLJ 1113; [1990] 1 CLJ (Rep) 330.

[40] In our view, there is merit in the submissions of learned counsel for the defendant. It is a well-settled legal principle that the court should not decide on an issue that was not pleaded by the parties as had been decided in *Yew Wan Leong v. Lai Kok Chye (supra)* where the Supreme Court cited *Janagi v. Ong Boon Kiat* [1971] 1 LNS 42; [1971] 2 MLJ 196 and agreed with the following passage of Sharma J which stated:

> The Court is not entitled to decide a suit on a matter on which no issue has been raised by the parties, it is not the duty of the Court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact it is not proper for the Court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings. The trial of a suit should be confined to the pleas on which the parties are at variance.

[41] We should remind ourselves that parties to an action are bound by their own pleadings. It is therefore necessary to make the point that the court is also bound by the pleadings in as much as the parties themselves. The most important purpose of pleadings is to plead reasonable cause of action, define the issues of fact and questions of law to be determined by the court. It is a valid argument to make that the court is constrained to decide an action on which no issue has been raised by the parties in their respective pleadings (*Ambank (M) Bhd v. Luqman Kamil Muhammed Don* [2012] 3 CLJ 551; [2012] 3 MLRA 459 and *Victory Avenue Mfg (M) Sdn Bhd v. Matsushita Electronic Devices (M) Sdn Bhd* [2009] 1 LNS 296; [2009] 5 MLJ 243).

[42] Still most importantly to note, paras. 8.1 and 8.2 in the defendant's statement of defence, as being the key plank in establishing the plaintiff's case for there existing an investigation committee, had been tellingly denied by the plaintiff himself at para. 5 of his reply to the defendant's statement of defence:

> Melainkan apa yang telah sebelum ini diakui, Plaintif menafikan setiap satu dan semua tuduhan yang terkandung di dalam Pernyataan Pembelaan.

[43] The basic fact that can be gleaned from the above is that a factual assertion made by the defendant in paras. 8.1 and 8.2 in its statement of defence was responded to by way of a general traverse in the plaintiff's statement of reply when he averred that except where previously admitted, the plaintiff denied each and every allegation contained in the defendant's statement of defence.

[44] In the context of the present case, what then is the effect of the general traverse or the seriatim clause?

[45] Order 18 r. 13 of the Rules of the High Court 1980 (equipollent with the present Rules of Court 2012) is relevant, and provides a good starting point:

> 13. (1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.
>
> (2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.
>
> (3) Subject to paragraph (4), every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to a counterclaim, as the case may be; and general denial of such allegations or a general statement of non-admission of them is not a sufficient traverse of them.

[46] From the above provisions, it can be seen that a traverse operates to deny an allegation of fact. As a matter of broad general principle, the effect of a general traverse is to deny each and every factual allegation raised by the opposing party (*Borneo Housing Mortgage Finance Bhd v. The Personal Representative of the Estate of Maureen Lee Lun Wah (Deceased) & Anor* [1994] 1 CLJ 501, *John Lancaster Radiators Ltd v. General Motor Radiator Co Ltd* [1946] 2 All ER 685 and *Warner v. Sampson* [1959] 1 QB 297).

[47] In the result, therefore, as things stood, the obvious consequence of the general traverse contained in para. 5 of the plaintiff's statement reply was to deny the defendant's factual allegation that an investigation committee was in fact established. It has to be pointed out that the plaintiff's denial of the establishment of the investigation committee was in direct contradiction of its present contention that an investigation committee was in fact formed under reg. 28(4) of the Disciplinary Rules.

[48] This then brings us to the submissions of learned counsel for the plaintiff that as a result of the general traverse, the onus of proof had shifted to the defendant to prove that the investigation committee was in fact established for the purpose of obtaining further clarification by way of examining witnesses. With respect, we are not persuaded with this line of arguments. For the purposes of this appeal, it is necessary to bear in mind that from the outset it was upon the plaintiff himself, and certainly not the defendant, to discharge the overall burden of proving his case and satisfy the court on a balance of probabilities that his claim as pleaded in the statement of claim was well founded before the court could grant judgment in his favour (*Syarikat Kemajuan Timbermine Sdn Bhd v. Kerajaan Negeri Kelantan Darul Naim (supra)*). The stand taken by the defendant not to prove the said averments was of the defendant's choice. However, that did not absolve the plaintiff from discharging the overall burden of proving his claim.

[49] Even more significantly, as submitted by the defendant's learned counsel, the plaintiff in his statement of reply did not make any admission against the facts averred in the defendant's statement of defence. To be more specific, the plaintiff did not admit paras. 8.1 and 8.2 of the statement of defence to support his contention that an investigation committee was in fact established and that he was not called for the hearing. We should also note that it would be a different thing if the plaintiff admitted to those paragraphs in his statement of reply. But most problematically, and it gets worse for the plaintiff when he denied the said paras. 8.1 and 8.2. The contradiction was never fully resolved. To be sure, what all the statement of reply contained was merely a series of denials and a general traverse clause at the end. In truth, the tenor and thrust of the plaintiff's statement of reply is a total rejection of the defendant's factual averments.

[50] In our judgment, the defendant's averments in paras. 8.1 and 8.2 of the statement of defence ultimately have no bearing on the plaintiff's case. The fact that the defendant pleaded in that fashion did not alter the fact that the plaintiff's pleaded case was his dissatisfaction with the non-formation of the investigation committee. Now, before this court, the plaintiff was trying to argue something quite different from his pleaded case even without the support of evidence. But as we have said earlier, the law is trite that the court should not decide an issue, which was not pleaded by the parties.

Conclusion

[51] In light of our findings and in the circumstances of this case, there is no necessity for us to answer the question as framed. In consequence, this appeal must fail. We accordingly dismiss it.

[52] This judgment is prepared pursuant to s. 78(1) of the Courts of Judicature Act 1964, as our learned brother, Justice Apandi Ali FCJ had since resigned upon his appointment as the Attorney General of Malaysia.